



REPUBLIC OF KENYA



**Kagame Autospares v Commissioner of Domestic Taxes (Income Tax Appeal E276 of 2025)  
[2026] KEHC 4160 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4160 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E276 OF 2025**

**MA OTIENO, J**

**MARCH 19, 2026**

**BETWEEN**

**KAGAME AUTOSPARES ..... APPLICANT**

**AND**

**THE COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT**

**RULING**

1. Before the Court is the Applicant's Notice of Motion dated 16th December 2025, by which the Applicant seeks extension of time to lodge a Notice of Appeal, Memorandum of Appeal, and Record of Appeal out of time against the judgment of the Tax Appeals Tribunal delivered on 16th October 2025 in TAT No. E034 of 2025.
2. On 2 February 2026, when this matter was mentioned in Court, the Court issued directions requiring the parties to file written submissions within set timelines. The record demonstrates that neither party complied with those directions. No submissions were filed in support of the application or in opposition to it.
3. A party seeking the Court's discretion must place before the Court sufficient material upon which such discretion may be exercised. The Applicant did not prosecute its own application, and the failure to comply with express directions amounts to non-prosecution of the motion. The Court is therefore left with no basis upon which the relief sought may be justified.
4. In any event, and more fundamentally, the intended appeal itself was filed out of time. Section 32(1) of the *Tax Appeals Tribunal Act* requires that an appeal to the High Court be filed within 30 days of the Tribunal's decision. The Tribunal rendered its judgment on 16th October 2025, yet the Applicant's Notice of Appeal is dated 10th December 2025, well outside the statutory window. No competent appeal therefore lies before this Court.



5. The Court cannot breathe life into an appeal that is already a nullity by reason of being filed out of time without leave. This Court (Majanja J) in *Commissioner of Domestic Taxes v Lifecare International Brokers Limited* [2020] eKLR, while dismissing an appeal filed which was similarly filed outside the 30-day period provided under the *Tax Appeals Tribunal Act*, stated that: -

“It is trite law that a right of appeal is a creation of statute and its exercise is governed by statutory strictures governing the exercise of that right (see *Nyutu Agrovet Limited v Airtel Networks Kenya Limited*; *Chartered Institute of Arbitrators-Kenya Branch (Interested Party)* SCK Pet. No. 12 of 2016 [2019] eKLR). Whether a party has complied with statutory provisions governing exercise of that right is a jurisdictional issue as was held by the Court of Appeal *Patrick Kiruja Kithinji v Victor Mugira Marete* MRU CA Civil Appeal No. 48 of 2014 [2015] eKLR, that:

It is our view, whether or not an appeal is filed on time goes to the jurisdiction of this Court. It is trite that this Court has jurisdiction to entertain appeals filed within the requisite time and/or appeals filed out of time with leave of the Court. To hold otherwise would upset the established clear principles of institution of an appeal in this Court. Consequently, we find that an appeal filed out of time is not curable under Article 159.”

6. The learned judge further stated that:

“Failure to file an appeal within time and without complying with statutory conditions is not a mere technicality that can be overlooked, it goes to the competence of the appeal. Counsel for the Appellant valiantly addressed the court on why the court should validate the appeal. The issues raised are factual issues that call for the court to exercise its discretion and can only be addressed in an appropriate application which is not before the court.”

7. In the absence of a competent appeal, and with the application itself unprosecuted, there is no basis for the Court to exercise its discretion in favour of the Applicant.

### **Disposition**

8. For the foregoing reasons, the Court makes the following orders:
- i. The Notice of Motion dated 16th December 2025 is dismissed for want of prosecution.
  - ii. The Appeal is struck out and dismissed, the same having been filed outside the 30-day period required under Section 32 of the *Tax Appeals Tribunal Act*.
9. There shall be no order as to costs.
10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH 2026**

**HON. JUSTICE MOSES ADO**

**JUDGE OF THE HIGH COURT**

In the presence of: -

C/A – Moses

N/A.....for the Applicant

N/A.....for the Respondent

